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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,919	08/06/2003	Claudius Zeiler	5858-00800	8849
7590 Conley Rose, P.C. P.O. Box 684908 Austin, TX 78768-4908				
EXAMINER				
SWIGER III, JAMES L				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
11/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/635,919	<b>Applicant(s)</b> ZEILER ET AL.
<b>Examiner</b> JAMES L. SWIGER	<b>Art Unit</b> 3775

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 29-34.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art Unit 3775

/JAMES L. SWIGER/  
Examiner, Art Unit 3775

Continuation of 3. NOTE: The amendment filed 10/20/2009 has been fully considered however it is not persuasive. The final rejection mailed on 7/21/2009 stands. While it is agreed that the term "discrete" was disclosed prior to this communication, its interpretation has changed slightly. As noted in the rejection, applicant was unclear as to what was meant by a particular side of the device. While the claim was being interpreted in one specific manner (i.e. the side surface may be opposing, or the side away from the bone) the claim would still at least read on one of the other sides (such as along the thin side spine of the device). Additionally, the side spines could be considered part of the "surface" that faces away from the bone. If one approaches the device of having 4 distinct sides, only one actually faces bone. Additionally in terms of the rejection, it is held that Herzberg in view of Sioufi still meets the claim limitations. Herzberg discloses portions that are used for securing members, however they are not circumferentially enclosed. Sioufi discloses circumferentially enclosed apertures which also receive flexible securing members. As an additional matter, the scope of at least claim 29 has changed with the amendment filed 10/20/2009. Claim 29 did not necessarily require at least one "discrete" receiving member. Additionally this was rejected on the merits in light of claim 34. Further for claim 29, which did not previously point out "said opposing" side surface, even if done for clarification purposes. It is further noted that claim 29 still appears to read on at least Wagner (US Patent 3,842,825). Wagner discloses an implant plate comprising a plate member (2) having a head and shaft, which is narrower), a bone-facing surface, and side facing away from bone, a plurality of holes for bone screws in the head (at least two for screws in the head, Fig. 4) as well as the shaft (at least two in the shaft) and at least two discrete receiving members protruding from the head (the remaining two bores in the head (8's, Fig. 5), that are also proximate the edge and also define a substantially circular and circumferentially enclosed aperture. It is noted that these bores are fully capable of being used by a flexible member to attach to bone. .